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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re CARLOS G., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

IRENE G.,

Defendant and Appellant.

B295169

(Los Angeles County  
Super. Ct. No. DK06409C-F)

APPEAL from orders of the Superior Court of Los Angeles  
County. Philip Soto, Judge. Affirmed.

Law Office of Linda Puertas and Linda B. Puertas, under  
appointment by the Court of Appeal, for Defendant and  
Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Veronica Randazzo, Deputy  
County Counsel for Plaintiff and Respondent.

Appellant Irene G. (mother) appeals from the juvenile court's orders denying her petitions under Welfare and Institutions Code section 388<sup>1</sup> seeking to vacate a section 366.26 hearing and to reinstate reunification services and overnight visits with her children Carlos (born 2004), Maricela (born 2006), Roberto (born 2014), and Gustavo (born 2015). Mother also challenges the order terminating her parental rights as to Roberto. We affirm the juvenile court's orders.

## **BACKGROUND**

### **Prior child welfare history**

From February to July 2014, the family, which then consisted of mother, her husband Ruben (father),<sup>2</sup> and minors Alejandra (born 1998), Maria (born 1999),<sup>3</sup> Carlos, Maricela, and Roberto, participated in voluntary family maintenance services.

On July 17, 2014, the Los Angeles County Department of Children and Family Services (the Department) filed a section 300 petition on behalf of Maria, Carlos, Maricela, and Roberto. On September 5, 2014, the juvenile court found that father's amphetamine and methamphetamine abuse; mother's amphetamine, methamphetamine, and alcohol abuse; and mother's unwillingness and inability to provide appropriate care and supervision of Alejandra placed the children at risk of harm. Maria, Carlos, Maricela, and Roberto were declared dependents of the juvenile court and placed in the parents' home under the

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Father is not a party to this appeal.

<sup>3</sup> Alejandra and Maria are not subjects of this appeal.

Department's supervision. The juvenile court terminated jurisdiction on March 5, 2015, and issued a family law custody order giving the parents joint legal custody and mother sole physical custody of the children. The court accorded father monitored visitation.

### **Detention and section 300 petition**

On October 20, 2015, the Department received an emergency response referral after the police received a telephone call from father regarding an incident of domestic violence. When responding officers arrived, father denied any violence but told the officers that he and mother had been using methamphetamine. The home was filthy and roach infested, and Maricela, Roberto, and infant Gustavo were unkempt and dirty. Maria and Carlos were not at home. There was no food in the home and Maricela said they had eaten cookies and water for dinner. The officers determined that both parents were under the influence of methamphetamine and were unable to care for the children. Mother and father were arrested for child endangerment and Maricela, Roberto, and Gustavo were taken into protective custody.

Father told the Department's responding social worker that he and mother had used methamphetamine for more than 18 years and that their methamphetamine addiction rendered them incapable of caring for the children. He admitted to daily methamphetamine use but denied using methamphetamine in the presence of the children. Father further stated that he had been diagnosed with bipolar disorder and was prescribed medication for that condition.

Mother told the social worker she had been using methamphetamine three to four times a week for the past two

years. She admitted using methamphetamine while nursing Gustavo.

The social worker met separately with the children. Maria and Alejandra acknowledged that the parents had a drug use problem. Carlos and Maricela both said they must often fend for themselves, and Maricela added that she must sometimes care for her younger siblings.

On October 23, 2015, the Department filed a section 300 petition on behalf of Maria, Carlos, Maricela, Roberto, and Gustavo, alleging the children were at risk of harm because of the parents' 18-year history of illicit drug use and current methamphetamine abuse; the family's prior dependency case because of the parents' drug abuse; father's mental and emotional problems, including a diagnosis of bipolar disorder; the filthy, unsanitary, and hazardous condition of the home; and the parents' arrests for child cruelty. That same day, the juvenile court ordered Maria, Carlos, Maricela, Roberto, and Gustavo detained from both parents.

### **Jurisdiction and disposition**

On October 29, 2015, Maria and Gustavo were placed with their paternal grandmother, and Carlos, Maricela, and Roberto were placed with a paternal aunt.

In separate interviews at the Department's offices in November 2015, mother and father admitted to a 17-year history of substance abuse and to using methamphetamine on the day of their arrest. Mother and father further admitted that the children knew of the parents' drug use. Father denied having a bipolar disorder and said he takes medication for anxiety.

The children remained in their respective placements at the time of the December 2015 adjudication hearing. The

juvenile court amended the petition to strike allegations that father suffers from bipolar disorder and that mother was arrested for child cruelty. Both parents pled no contest to the petition, and the juvenile court sustained the petition as amended. The court declared the children dependents of the juvenile court and ordered them removed from the parents' custody.

The court ordered mother to complete a drug and alcohol program with aftercare, random and on-demand drug and alcohol testing, a parenting education program, and individual counseling with a Department-approved licensed therapist to address case issues. Both parents were accorded monitored visits three times a week for three hours per visit.

**Six-month review period – December 2015 to June 2016**

In March 2016, the paternal aunt informed the Department that she was no longer willing or able to care for Carlos, Maricela, and Roberto. Carlos and Maricela were replaced in a foster home with Hilda R. and Juan R., and Roberto was placed in a foster home with Ana M. and Nicolas T.

In June 2016, the Department reported that Carlos, Maricela, and Roberto were doing well in their new placements. Maria and Gustavo remained in the paternal grandmother's home, where Maria helped care for Gustavo.

Mother had enrolled in a 52-week drug and alcohol program and a 52-week parenting program, and had attended 6 sessions of individual therapy at HOPICS. She had eight negative drug tests between November 2015 and March 2016 and failed to appear for testing once.

The parents visited with Carlos, Maricela, and Roberto on Saturdays at a shopping mall from 9:00 a.m. to noon and with Maria and Gustavo for two to three hours on Sundays at the

paternal grandmother's home. The parents also telephoned the children daily.

At the June 16, 2016 six-month review hearing, the juvenile court found both parents in partial compliance with their respective case plans and accorded them additional family reunification services. A 12-month review hearing was set for December 15, 2016.

#### **Twelve-month review -- June 2016 to December 2016**

In December 2016, the paternal grandmother reported that Gustavo was "a hand full" and that she was glad Maria was in the home to help with the child. Roberto's caregivers reported that Roberto was a very active child and was doing well in their home. Maricela's caregivers stated that she was "a sweet young lady" but sometimes displayed anger toward Carlos. Carlos was exhibiting aggressive behavior, both at home and in school.

Mother had obtained part-time employment and continued to participate in services. She had completed 47 sessions of her 52-week drug treatment program, 48 sessions of her 52-week parenting education program, and 29 sessions of individual counseling. Both parents had monitored visits with the children on Saturdays from 9:00 a.m. to noon and were appropriate and loving during the visits.

The Department reported that mother had expressed a sincere repudiation of drugs and alcohol and recommended further reunification services to address the family's needs and to transition the children back to their parents' care. The Department noted that the parents' current residence, a rented bedroom, was inadequate to accommodate the children.

On December 15, 2016, the juvenile court found that the parents had consistently visited the children and had made

significant progress in addressing the problems that led to the children's removal. The court ordered further family reunification services and an additional six hours of unmonitored visitation per week and gave the Department discretion to allow overnight visits. An 18-month review hearing was set for April 27, 2017.

**18-month review period -- December 2016 to April 2017**

In April 2017, the Department reported that Gustavo and Maria were both doing well in the paternal grandmother's home, and Maria was applying to several colleges and universities. Roberto was participating in regional center services, and his speech delay had improved.

Carlos and Maricela were both participating in therapy. The therapist reported that Carlos suffered from attention deficit disorder and recommended a psychiatric referral. Carlos's behavioral issues at school continued until the school required his foster parent to sit in the classroom for several days. Carlos's behavior thereafter improved.

The Department liberalized the parents' visits to include weekend and overnight visits in February 2017. The children reported no issues and said they enjoyed spending time with their parents.

Mother had completed a drug treatment program and a parenting education program and had tested consistently negative for drugs, but had not participated in any services since October 2016. She had stopped attending AA/NA meetings and individual counseling. Mother mistakenly believed she had completed individual therapy when her former therapist left HOPICS. The clinical director at HOPICS told the Department's social worker that mother had been assigned a new therapist who

had attempted unsuccessfully to contact mother in October and November 2016. When mother failed to respond to messages, she was involuntarily discharged from the program.

The HOPICS clinical director recommended further counseling for mother given her long history of substance abuse, years of child neglect, and the criminal conviction of an older daughter. The director emphasized the importance of addressing with mother the stressors of parenting and preparing for returning the children to mother's care.

In a last-minute information for the court, the Department reported that both parents had re-enrolled in individual counseling, and that mother had participated in four sessions and was scheduled to resume weekly sessions. The Department arranged an overnight visit for all the children to attend Maria's high school graduation. During the visit, the social worker discovered that the parents lacked adequate living and sleeping arrangements. The parents were living in a single bedroom the size of an office cubicle. During the visit, five children slept on two twin mattresses on the floor. The Department recommended suspending overnight visits until the parents procured appropriate bedding for the children.

The juvenile court conducted an 18-month review hearing on June 29, 2017. The court found mother and father to be in partial compliance with their case plans and that returning the children to their custody would create a substantial risk of harm to the children. The court terminated family reunification services and set a section 366.26 hearing.

#### **Postreunification period -- July 2017 to January 2019**

The Department reported in October 2017 that Maria had graduated from high school with honors and was attending West



Los Angeles College. Gustavo was still experiencing speech delays and had been referred for additional regional center services.

Carlos and Maricela continued to participate in biweekly therapy. Their therapist reported that Carlos and Maria were upset when reunification did not occur; however, both children said they did not miss living with their parents and that the Sunday visits were sufficient. Maricela told the therapist that if she returned home, she would be raising herself.

Roberto had completed his regional center services and was on a waitlist for preschool services. His caregivers considered him to be a member of their family.

Mother and father had weekly, full-day, unmonitored visits with the children. In July 2017, the Department learned that the parents were transporting themselves and the five children in a vehicle that could accommodate a maximum of five persons. The parents had seated Gustavo on the floor of the front seat between mother's legs. The remaining four children sat in the backseat where there were an insufficient number of seat belts for them. The social worker told the parents that the car travel arrangements were illegal and dangerous, and the parents agreed to cease transporting the children and to confine their visits to a single location.

In February 2018, the Department reported that Roberto and his foster mother shared a close and visible bond, and that his foster parents wanted to adopt him. Gustavo shared a similarly close bond with his paternal grandmother.

Carlos and Maricela were thriving and said they enjoyed living in their caregivers' home. They indicated they did not want to be adopted but were open to legal guardianship. Carlos's

and Maricela's caregivers were experiencing health issues and for that reason were not willing to become the children's legal guardians. The caregivers said the children could remain in their home until a permanent home could be found for them.

Mother and father continued to have unmonitored day visits with the children once a week. Maria occasionally joined the visits. The children said that the visits went well; however, Roberto's caregivers reported that after family visits, Roberto exhibited aggressive behaviors and used foul language.

In June 2018, the Department reported that Roberto and Gustavo were both happy and energetic toddlers who were bonded with their respective caregivers. Carlos and Maricela appeared happy and were comfortable in approaching their caregivers to express their needs and wants. Maricela was exhibiting some behavioral issues, however, and her caregivers requested an assessment for a possible mood disorder.

The parents continued to have weekly, unmonitored day visits with the children. Both Roberto's and Gustavo's caregivers reported aggressive behaviors when the children returned from visits with the parents.

#### **Mother's section 388 petition**

On September 7, 2018, mother filed section 388 petitions seeking to reinstate reunification services and overnight visits with the children.<sup>4</sup> In her petitions, mother alleged she had consistently attended and made progress in individual counseling

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<sup>4</sup> Father also filed section 388 petitions in June 2018 seeking reinstatement of reunification services and housing referrals, or alternatively, overnight visits with the children. The juvenile court denied father's petitions following an August 9, 2018 hearing.

and had obtained stable housing. Mother further alleged the requested changes were in the best interests of the children because she had maintained a parental relationship with them, and the children wished to return to her custody. The juvenile court granted mother a hearing on her petitions.

In its response to mother's petitions, the Department noted that mother was participating in individual therapy two times a month and had remained sober for three years.

The social worker assessed mother's home, a clean and uncluttered studio apartment with a full-sized bed and a futon sofa. When the social worker asked where the children would sleep during overnight visits, mother replied that she was purchasing twin beds for two children; one could sleep on the sofa; and another could sleep on her bed while she slept on the floor. Mother said she lived alone and had no frequent visitors. She said she had ended her relationship with father because he did not want to change. The social worker determined that mother's home was presently inadequate to resume overnight visits.

On October 2, 2018, the social worker transported Carlos and Maricela to mother's apartment to participate in a child and family team (CFT) meeting. While en route, Carlos told the social worker he would be comfortable reunifying with mother after she found a bigger place to live. Carlos stated that mother would need some time to get used to caring for younger siblings Roberto and Gustavo. Maricela asked to speak with the social worker alone outside mother's apartment. She said she did not understand why mother had asked to reinstate reunification services when "she doesn't even have beds for us." Maricela said she wished to continue living with her current caregivers and did

not want to switch schools or leave her church. She said her current caregiver taught her proper hygiene. Maricela was tearful and emotional. When the social worker encouraged her to express her feelings during the CFT meeting, Maricela said she did not feel comfortable telling mother that she wished to remain with her caregivers because she did not want to upset mother.

During the CFT meeting, mother provided the children with food and water and spoke with them about the possibility of living with her. Carlos responded by stating that mother needed a bigger apartment and beds for his younger siblings. Maricela walked around the apartment but did not engage in conversation with mother.

The Department recommended that the juvenile court deny mother's section 388 petition, noting that mother did not appear to have developed a strong attachment with the children, who felt safe and comfortable in their caregivers' homes.

The Department reported in September 2018 that Roberto's caregivers had an approved adoption home study. Roberto had been with his caregivers since he was 22 months old, and his caregivers were committed to adopting him.

In October 2018, the social worker asked the paternal grandmother if she would be comfortable allowing Gustavo to have overnight visits with mother. The paternal grandmother responded that Gustavo requires a lot of attention and that she did not believe mother could provide the care that he needed. She explained that Maria had taken care of all of the younger siblings because mother could not do so.

The social worker also spoke with Maria and inquired about the visits between her siblings and the parents. Maria replied that Carlos and Maricela helped mother take care of

Gustavo and Roberto during the visits. When asked whether mother could have overnight visits with the children, Maria stated that having all the children together would be overwhelming for mother and that it would be better for mother to practice caring for one child at a time.

In October and November 2018, Carlos's and Maricela's caregivers reported that although they were unwilling to become legal guardians, they wished to provide permanency for the children and have them remain in the home until they were 18 years old.

In November 2018, mother told the social worker she had not yet acquired sufficient bedding for the children to have overnight visits. She said she did not ask the older children to help her with their younger siblings, but that they helped her when they saw that she needed it.

On November 15, 2018, the juvenile court continued the hearing on mother's section 388 petitions to January 15, 2019.

In January 2019, the Department reported that mother continued to receive substance abuse counseling, had consistently tested negative for drugs and alcohol, and had shown tremendous progress in resolving her substance abuse issues. Mother also continued to participate in individual counseling every other week. Her treatment team recommended continued mental health services. Mother had some difficulty articulating what she had learned and what she continued to work on in individual therapy.

The social worker observed a visit between mother and the children in December 2018. Maricela appeared to be distant and had minimal interaction with mother, who made no effort to engage Maricela in conversation. In early January 2019, mother

told the social worker she had not yet acquired proper bedding for the children to have overnight visits.

Carlos and Maricela continued to state that they did not wish to be adopted. Carlos believed they would soon be returning to their parents' care. Maricela said she liked living with her caregivers and did not want to live with any extended family members. Carlos's and Maricela's caregivers again vacillated about their willingness to provide permanency for the children. The foster mother now stated she was not interested in providing any type of permanency for the children. The Department requested additional time to determine an appropriate permanent plan.

#### **Combined sections 388 and 366.26 hearing**

On January 15, 2019, the juvenile court conducted a hearing on mother's section 388 petitions and the children's respective permanent plans.<sup>5</sup>

At the section 388 hearing, the juvenile court received into evidence mother's petitions, a letter from HOPICS dated January 15, 2019, and the Department's file and reports.

The Department's social worker, Vita Valenzuela, testified that she had been assigned to the case since August 2018, that she had told mother that appropriate bedding was necessary in order to resume overnight visits, but that as of January 2019, mother had not acquired proper bedding for the children. Valenzuela stated that even if mother obtained appropriate bedding, the children remained at risk in mother's care because

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<sup>5</sup> The juvenile court continued the section 366.26 hearing several times, to February 21, 2018, June 20, 2018, October 17, 2018, November 15, 2018, and January 15, 2019.

both mother's substance abuse counselor and individual counselor had stated that mother had not yet met her therapeutic goals.

Valenzuela also testified about mother's failure to build attachments to Maricela. Maricela had told Valenzuela that she did not understand why mother had filed a section 388 petition and that she did not want to return to mother.

After hearing argument from the parties, the juvenile court noted that it had been the hearing officer on the case since 2014 and commended mother for her efforts. The court found, however, that mother still lacked the parenting skills necessary to care for the children. The court denied mother's section 388 petitions, finding that mother had not demonstrated a change in circumstances and had failed to show that granting her requested changes were in the children's best interests.

The juvenile court then proceeded to the section 366.26 hearing. The court continued the hearing as to Carlos and Maricela because their caregivers were reportedly now willing to become legal guardians.

As to Gustavo, the court found that it would be detrimental to return him to the parents' custody, declared the paternal grandmother his legal guardian, and terminated jurisdiction over him.

The juvenile court similarly found that it would be detrimental to Roberto to return him to the parents' custody, that there was clear and convincing evidence that Roberto was adoptable, and that no exception to adoption applied. The court terminated parental rights and designated Roberto's caregivers as his prospective adoptive parents.

On January 16, 2019, mother filed this appeal challenging the denial of her section 388 petitions and the termination of her parental rights over Roberto.<sup>6</sup>

On May 1, 2019, the juvenile court ordered legal guardianship for Carlos and Maricela with their current caregivers and terminated jurisdiction.

## DISCUSSION

### I. Section 388 petitions

#### A. *Applicable law*

Section 388 provides in relevant part: “Any parent . . . [of] a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . to change, modify, or set aside any order of court previously made.” To obtain the requested modification, the parent must demonstrate both a change of circumstances or new evidence, and that the proposed change is in the best interests of the child. (§388, subd. (a)(1); Cal. Rules of Court, rule 5.570(a), (e); *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) “[T]he change of circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged prior order.” (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 485.)

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<sup>6</sup> In her reply brief, mother argues that the juvenile court abused its discretion by identifying legal guardianship as Gustavo’s permanent plan. Mother did not, however, appeal from the court’s appointment of the paternal grandmother as Gustavo’s legal guardian, and she presented no argument in her opening appellate brief against legal guardianship for Gustavo.



### ***B. Changed circumstances***

Mother argues that her three years of sobriety was a changed circumstance. She points out that she remained sober under difficult circumstances such as termination of her reunification services, leaving father when he failed to change his ways, and moving into an apartment on her own for the first time.

Mother's efforts to become and to remain sober are commendable, and the juvenile court lauded mother for doing so. Mother's 18-year history of substance abuse was not the only reason however, the children were removed from her care. Her severe neglect of the children was another basis for the children's removal. There was no food in the home, the children were dirty, and Maria, Carlos, and Maricela said they often fended for themselves.

After the children were removed from mother's care, Maria, Carlos, the paternal grandmother, and Roberto's caregiver all expressed concerns about mother's ability to care for all of the children during overnight or weekend visits, noting that mother relied on the older children to help feed, bathe, and care for Roberto and Gustavo. Mother exhibited poor judgment during unmonitored visits with the children when she and father transported the children in a vehicle too small to accommodate them all and sat two-year-old Gustavo on the front passenger floor between mother's legs.

The record does not support mother's claim that the juvenile court impermissibly found her to be an unfit parent based solely on her poverty and her inability to obtain appropriate housing and bedding to accommodate all the children. Rather, the record shows that mother's inability to

parent the children and her therapists' opinions that she had not met her therapeutic goals were the reasons for the juvenile court's denial of her section 388 petitions.

Substantial evidence supports the juvenile court's finding that mother had not met her burden of demonstrating changed circumstances.

***C. Best interests of the children***

The juvenile court concluded that granting mother's petition to reinstate reunification services and to vacate the section 366.26 hearing was not in the best interests of the children. Factors to be considered in determining what is in the best interests of a child under section 388 include "(1) the seriousness of the problem which led to the dependency, and the reason for any continuation of that problem; (2) the strength of relative bonds between the dependent children to *both* parent and caretakers; and (3) the degree to which the problem may be easily removed or ameliorated, and the degree to which it actually has been." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532.)

Mother failed to prove that her requested changes were in the best interests of the children, who were all thriving in their respective placements. Roberto and Gustavo had been with their respective caregivers for approximately three years -- a longer period than either had spent with their parents. Both children were bonded with their caregivers. Both Roberto's and Gustavo's caregivers reported that the children exhibited aggressive behaviors following visits with the parents.

Maricela told the social worker in October 2018 that she wanted to remain in her caregivers' home. During monitored visits in October and December 2018, the social worker observed

that Maricela and mother had minimal interaction with one another.

While it is true that Carlos expressed a desire to return to his parents' care, he also told mother that she needed a larger apartment and beds to accommodate all the children. Carlos's caregivers provided him with a supportive and structured home environment that enabled him to manage his ADHD diagnosis.

After receiving four years of services, mother failed to demonstrate that she could parent the children. She also failed to demonstrate that an additional six months of services would be in the children's best interests. There is a limit on the length of time a child must wait for a parent to become adequate. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 308.) The juvenile court did not abuse its discretion by denying mother's section 388 petitions.

## **II. Termination of parental rights**

Section 366.26, subdivision (c)(1) provides for the termination of parental rights if family reunification services have been terminated and the juvenile court finds by clear and convincing evidence that the child is likely to be adopted. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern . . . the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability. [Citation.]' [Citation.]" (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) "Adoption, where possible, is the permanent plan preferred by the Legislature. [Citation.]" (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*)). Although the statutory preference is in favor of adoption, section 366.26 lists certain exceptions that may preclude termination of parental rights, if the juvenile court finds "a compelling reason for determining that termination would be

detrimental to the child.” (§366.26, subd. (c)(1)(B).) The exception relevant in this case provides as follows: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§366.26, subd. (c)(1)(B)(i).)

The parent bears the burden of proving that this exception applies. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 952-954.) “[T]he exception does not permit a parent who has failed to reunify with an adoptable child to derail an adoption merely by showing the child would derive some benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348.)

For the exception to apply, the parent must have maintained regular visitation with the child, and the juvenile court must determine that the parent/child relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and sense of belonging a new family would confer. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) A parent must establish more than merely some benefit to the child by continuing the parent/child relationship. That relationship must be “a substantial, positive emotional attachment such that the child would be greatly harmed” if the relationship were severed. (*Ibid.*) To overcome the benefits associated with a stable, adoptive family, the parent seeking to continue a relationship with the child must prove that severing the relationship will cause not merely some harm, but great harm to the child. (*In re*

*Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Factors that the juvenile court should consider when determining the applicability of the exception include “[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs . . . .” (*Autumn H., supra*, 27 Cal.App.4th at p. 576.)

The juvenile court’s ruling on whether an exception applies to terminating parental rights pursuant to section 366.26 is reviewed under the substantial evidence standard. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 424-425.) Under this standard, an appellate court must affirm the juvenile court’s order if there is evidence that is reasonable, credible, and of solid value to support the order. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) Moreover, the evidence must be considered “in the light most favorable to the prevailing party, given the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*Autumn H., supra*, 27 Cal.App.4th at p. 576.)

Substantial evidence supports the juvenile court’s determination that the parental exception to terminating mother’s parental rights did not apply. At the time of the section 366.26 hearing, Roberto had lived with his caregivers for nearly three years -- most of his young life. Roberto followed his foster mother around the home and constantly reminded her that he loved her. Although mother visited regularly with Roberto, the evidence showed that mother did not parent him but instead relied on Maria, Carlos, and Maricela to care for him. Roberto’s caregivers reported that Carlos fed and bathed Roberto during overnight visits with mother.

*In re Amber M.* (2002) 103 Cal.App.4th 681 and *David B. v. Superior Court* (2004) 123 Cal.App.4th 768 (*David B.*), cases on which mother relies as support for her position, are distinguishable. The court in *Amber M.* reversed an order terminating parental rights after finding that the mother had met her burden of demonstrating a beneficial relationship with her children. (*Amber M.*, at p. 689.) Evidence presented by the mother included a bonding study and testimony from the children's therapists and CASA representative. The court found that "[t]he common theme running through the evidence from the bonding study psychologist, the therapists, and the CASA is a beneficial parental relationship that clearly outweighs the benefit of adoption" and that during visitation the mother "acted in a loving, parental role with the children." (*Id.* at p. 690.)

In this case there is no evidence that mother shared a similar bond with Roberto or that she acted in a parental role with him. Rather, the evidence showed that Roberto had a visible, loving bond with his prospective adoptive mother and that his older siblings, not mother, cared for him during visits. Mother failed to meet her burden of demonstrating that the claimed exception to terminating parental rights applied.

*David B.* is similarly distinguishable. The court in that case reversed an order terminating reunification services for a father who was denied custody of his two-year-old daughter because he lacked an understanding of basic parenting concepts. The appellate court found that the evidence supporting this determination -- the father's frequent telephone calls to the social worker and foster parents with "very basic" questions on raising a child -- did not support the conclusion that the father "lack[ed] basic parenting abilities in any sense that would indicate danger

to [the child].” (*David B.*, *supra*, 123 Cal.App.4th at p. 773.) The court emphasized that “[a]t this point in the proceedings, the burden is entirely on [the agency], not [the father]” to demonstrate that releasing the child to the father’s custody would place the child at substantial risk of harm. (*Id.* at p. 789.) That standard, the court concluded, “must be construed as a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.” (*Ibid.*)

A different standard applies here. Mother, not the Department, bore the burden of proving that her relationship with Roberto promotes his well-being to such a degree as to outweigh the benefits he would gain in a permanent home with his prospective adoptive parents. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Mother did not sustain that burden. Moreover, the evidence of mother’s parenting deficiencies in this case included not only the observations of the social worker and the paternal grandmother but those of her own children as well. Substantial evidence supports the juvenile court’s determination that no exception to terminating mother’s parental rights applied.

**DISPOSITION**

The orders denying mother's section 388 petitions and terminating her parental rights are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
HOFFSTADT